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Right of Labor Union to Solicit Members

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longest and most earnestly enforced, nevertheless have held that laws permitting and even requiring the separation of the races in places where they are liable to be brought into contact, are within the competency of the state legislatures, in the exercise of their police power.[8]

Evidently, the government feels that when it has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed. This, despite the fact that if the separation of scholars on the color line can be sustained, force is lent to the contention that pupils of different nationalities can be divided. The term colored race is but another designation for African. Clearly, then, if a Board of Directors is clothed with a discretion to exclude African children from the common schools and require them to attend, if at all, a school composed wholly of children of that nationality, it may do likewise with any nationality. Sustaining any such action would be to sanction a plain violation of the spirit of our laws, and would tend to perpetuate the national differences of our people and stimulate constant strife, if not a war of races.

Upon inquiring into the validity of a statute, the Supreme Court says that it will not consider the motive in fact actuating the state legislature in voting for its enactment. If the law does not conflict with some constitutional limitation of the powers of the state legislature it cannot be declared invalid. Concerning the authority of the state over matters pertaining to public schools within its limits, and the validity of legislation of the character of that under consideration, the state has the right to provide separate schools for the children of different races, and such action is not forbidden by the fourteenth amendment to the constitution, provided the schools so established make no discrimination in educational facilities. Of the practical inconvenience of traveling many miles to a colored school when a public school for white children is within a stone's throw, the Court is silent, the question not having been raised.

Will the Supreme Court of the United States say, with Rosseau, when again faced with a similar situation, "It is precisely because the force of things tends always to destroy equality that the force of legislation ought always to tend to maintain it," and if there be any doubt, incline in favor of equality?

J. M.

RIGHT OF LABOR UNION TO SOLICIT MEMBERS.—The recent decision at the New York County Special Term in the suit of Interborough

[8] *Supra* note 6.

Rapid Transit Company *v.* William Green, individually and as President of American Federation of Labor, *et al*,[1] is an interesting, although in itself a somewhat insignificant, link in the growing chain of decisions introduced by the *Exchange Bakery* case.[2] That case rested its decision on principles in themselves startlingly new, and is illustrative of a method of approach, novel, in the solution of labor law problems.

In the *Exchange Bakery* case, the Court was presented with the problem of passing upon the question of the legality of picketing,[3] and whether or not a labor union has the right to solicit for itself members, in the manner there set forth. After deciding that the business of another may be interfered with under certain justifiable conditions, the means employed being as well lawful, the Court said:

> "The purpose of a labor union, to improve the conditions under which its members do their work; to increase their wages; to assist them in other ways, may justify what would otherwise be a wrong. So would an effort to increase its numbers and to unionize an entire trade or business. It may be as interested in the wages of those not its members, as in its own members, because of the influence of one upon the other. All engaged in a trade are affected by the prevailing rate of wages. All, by the principle of collective bargaining. * * * Where the end or the means are unlawful and the damage has already been done, the remedy is given by a criminal prosecution or by a recovery of damages at law. Equity is to be invoked only to give protection for the future. To prevent repeated violations threatened or probable of the complainant's property rights an injunction may be granted."

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[1]N. Y. L. J., Feb. 16, 1928.

[2]Exchange Bakery and Restaurant *v.* Rifkin, *et al.*, 245 N. Y. 260, 157 N.E. 130 (1927). Plaintiff conducted a non-union restaurant employing therein only non-union waitresses. These waitresses, at the time of hiring promised not to join any union during the time of their employment. Defendant union succeeded in procuring as union members four of the sixteen waitresses employed by the plaintiff, and at a prearranged signal called a strike. The four waitresses stopped work immediately and the next day picketing began, two union members patrolling the sidewalk in front of the premises carrying placards with notice of the strike. There was no violence or disorder. Plaintiff procured an injunction which was reversed in the Appellate Division, and sustained in the Court of Appeals, the Court holding that the agreement not to join a union was unenforcible for lack of consideration—that therefore the defendant was not guilty of inducing the breach of a contract.

[3]*Supra* note 1. The plaintiff not having shown violence, the picketing was held lawful and would not be enjoined. For cases illustrating when picketing will be enjoined see Stuyvesant Lunch & Bakery Corp. *v.* Reiner, 110 Misc. 357, 181 N. Y. Supp. 212 *aff'd* 192 App. Div. 951, 182 N. Y. Supp. 953 (1920); Yates Hotel Co. *v.* Meyers, 195 N. Y. Supp. 558 (1922); Schwartz *v.* Hillman, 189 N. Y. Supp 21 (1921).

In studying the prior decisions of the Court in its handling of labor problems, by way of contrast to this case, it is interesting to note the Court's explanation and application of the term "justification." "Self interest" is in reality the basis of such justification,[4] and there lies therein a broadness of outlook, a closer and truer realization and recognition of the problem, not as a legal conflict between individuals, but an economic one between two conflicting groups. This manifested itself as a strong basis for the decision in the *Lavin*[5] case in which the Court following the *Exchange Bakery* decision, refused to grant an injunction, saying:

> "The defendants have the right to induce plaintiff's employees to join Amalgamated Association though that may involve the termination of their employment. They are under no obligation to the plaintiff to inform it that some of the plaintiff's employees are joining the Union so that plaintiff may exercise its choice of retaining or discharging the new members. They are not under any obligation even to urge or compel their new members to give their employer such information. The defendants are acting for themselves and the Amalgamated Association, and in taking lawful action to advance the interests of the members of that Union they are under no affirmative duty of protecting the privileges or even rights of the plaintiff."

In the *Lavin* case the Court was dealing with a contract "at will." In that case there was no reciprocal, binding contract between employer and employee, and the ruling laid down is that in such cases there is no paramount right of the employer to protection of his contract for hire, since there is the right in the employee to terminate the contract at will. The decision, therefore, in both of these proceedings established clearly in such cases, the right of a labor union to solicit members for itself, and sanctioned the method therein employed.

In the case at bar, plaintiff, the Interborough Rapid Transit Company, sought to enjoin the defendant from various acts claimed to be illegal and in violation of a contract between the Brotherhood and its

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[4]*Cf.*, Dissenting opinion per Brandeis, J., in Duplex Printing Press Co. *v.* Deering, 254 U. S. 443, 479 (1921).

[5]Interborough Rapid Transit Co. *v.* Lavin *et al.* 247 N. Y. 65 (Jan. 1928). Plaintiff sued for an injunction which would in effect prohibit the defendants from inducing the plaintiff's employees by lawful or unlawful means to leave the plaintiff's employ. Plaintiff, a common carrier, brings this action against defendants as representatives of the labor union. The Court of Appeals in refusing to grant an injunction, said "Inducing the breach of a contract is not here involved * * *." The Court thereby again refusing to enforce an agreement of an employee to refrain from joining a labor union, and refusing to grant an injunction against such labor union prohibiting it from soliciting members, among the plaintiff's employees.

individual members, employees of the plaintiff. Plaintiff is a common carrier operating its transit lines in the City of New York. It had formed a Brotherhood and had made it a condition precedent to employment that all employees join such Brotherhood, requiring also that the employees promise to refrain from joining any other labor organization during the term of their employment. The contract purported to give employment for a definite stated period, but in other clauses the company reserved to itself the right to dismiss the employee in certain specified instances,—changing economic conditions, seasonal requirements, adoption of new devices, etc. The defense interposed was that the contract alleged was void and unenforceable by reason of fraud, duress and lack of consideration, and that therefore it should fail in equity. In the *Lavin* case, which plaintiff sought to distinguish from the case at bar, the plaintiff laid stress upon the decisions in the *Hitchman*[6] case and a line of cases[7] which held that contracts terminable at will were to be protected against those inducing their breach, but the Court quite properly refused to be bound by these decisions, and followed the *Lavin* case, and the method of approach there employed, holding that the acts of the defendants in inducing plaintiff's employees to join their union were justifiable. In the language of the Court:

> "It has not been established that violence, threats, fraud or overreaching conduct have been used to induce plaintiff's employees to become members of the Amalgamated Association, nor that other acts have been committed or threatened which would warrant the issuance of a restraining order."

Hence, in the instant case the Court held that the contract purporting to be a binding one. for a definite period of time, was not such, and therefore, that it came within the rulings in the *Lavin* and *Exchange Bakery* cases. The decision in itself adds nothing to the principles laid down in the *Exchange Bakery* and *Lavin* cases. Its interest lies in the manner of its application of those cases. It distinguishes the facts before it to bring them within the rule of the recent decisions. This approved common law method of judicial legislation holds promise of the same enlightened treatment of the question as yet unpassed upon,—the right of a labor union to solicit members for itself, notwithstanding the establishment of a valid binding contract of employment for a definite stated term.

R. N.

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[6]Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 38 Sup. Ct. 65 (1917).

[7]International Organization United Mine Workers of America *v.* Red Jacket Consolidated Coke & Coal Co. 18 Fed. (2d) 839 (C.C.A. 4th 1927); Walker *v.* Cronin, 107 Mass. 555 (1871); Berry *v.* Donovan, 188 Mass. 353, 74 N. E. 603 (1905); Brennan *v.* United Hatters, 73 N. J. L. 729, 65 Atl. 165 (1906); Thacker Coal Co. *v.* Burke. 59 W. Va. 253, 53 S.E. 161 (1906); Bixby *v.* Dunlap, 56 N.H. 456 (1876).